

**BUTTE-SILVER BOW LOCAL GOVERNMENT
STUDY COMMISSION**

**Minutes of the Meeting
February 23, 2006
Butte-Silver Bow Courthouse, First Floor Conference Room**

Meeting Date: February 23, 2006

Time: 5:30 p.m.

Place: Butte-Silver Bow Courthouse, First Floor Conference Room

Call to Order: Chairman Bob Worley brought the meeting to order at 5:40 p.m. and called roll with the following results:

Members Present: Ristene Hall, Wayne Harper, Dave Palmer, Northey Tretheway, Bob Worley, and Shag Miller

Excused Absences: Meg Sharp, Tony Bonney, Cindi Shaw and Ron Rowling

Approval of Minutes: Dave Palmer pointed out an error in the minutes. He stated in reference to the minutes from February 2, 2006 where it stated, Dave Palmer commented that in the minutes from last week he opposed on the motion, it had to do with going to the November primary versus the June Primary.

Wayne Harper was reading from the BSB Policy and Procedure Manual. He read a section, which stated there is a policy that tells BSB employees how much they may drink or drive after drinking...know your limits. If you have one drink and weigh 180 pounds, you are only .02 so you are allowed to have two drinks. Wayne commented from reading that, it sounds like it is saying you can drink and drive while working for BSB.

Bob Worley entertained a motion for the minutes from February 16, 2006 to be approved with corrections. Dave Palmer moved and Wayne Harper seconded the minutes from February 16, 2006 be approved. All were in favor and the motion carried.

Comments from Ron Rowling: Bob Worley mentioned Ron Rowling stopping by for a few minutes. Ron did not have any information on the Auditor. Ron Rowling will not be back from vacation until March 9, 2006.

Citizen's Comments: None.

Items Not on Agenda: Bob Worley commented that Party Line has been changed from March 6th to March 7th. The show will air at 1:05 p.m.

Bob Worley mentioned having all of the Council of Commissioners attend the March 2, 2006 meeting to view the proposed changes made to the draft of the charter. Bob Worley commented that they are not far from being done with the draft of the charter and a lot of the major changes have already been made. Bob Worley requested Jennifer have copies of the proposed changes available for the commissioners to review at the meeting.

Bob Worley discussed the copies of the draft that would be available for people to pick up prior to the public hearing. Bob asked everyone for suggestions on how many copies should be made. Bob asked if 250-300 would be sufficient? Bob also asked where they should place the copies in

the courthouse, such as the Clerk and Recorder's Office. Northey Tretheway suggested they place copies at the library. It was decided that 300 copies would be made available to the public.

Shag Miller suggested having Paul Babb attend the Study Commission meeting on March 2, 2006 with the Council of Commissioners. Bob Worley agreed and commented that he has already informed Bob McCarthy that they planned on having the commissioners attend and would like him present in case there was anything that needed to be answered by him. Bob Worley informed Jennifer that they should be included on the Study Commission Agenda.

Bob Worley asked Northey how he was coming along on the overheads. Northey replied that he was not aware that he was doing them. He thought Jennifer could cut and paste the information from MS Word to PowerPoint.

Bob Worley clarified that Northey was going to do the explanations on why the proposed changes to the draft were made.

Northey suggested it be done in the same format that it would be going into the final report. Northey suggested they get a copy of the last report done and see how the previous Study Commission put it together.

Bob Worley referred to the table on page 131.

Northey Tretheway replied the charter should show how the structure or form of government would operate and what they have been talking about is the actual operations.

Bob Worley confirmed to Jennifer that the overheads would be done prior to the 9th of March and requested Northey provide Jennifer with the explanations to the proposed changes.

Bob Worley went over the proposed changes made in the draft and checked for any grammatical errors. He came up with 28 changes.

Wayne Harper suggested the draft be reformatted and pointed out a grammatical error at the end of Section 3.03.

Wayne Harper referred to Section 5.02 (b)(6). He asked if it was saying the Chief Executive could never miss a meeting? They already have it stating if he is not there somebody else presides. It states, "will do it at all regular meetings". He was wondering if that is what they really mean.

Shag Miller suggested they state it, "at regular meetings" and delete the word "all".

Northey Tretheway commented what it states in the charter, for example, the Chief Executive could have someone report for him at the meeting if he happened to be out of town. That is how he interpreted it.

Dave Palmer stated when the Chief Executive is absent from a meeting, the Chairman of the Council stands in his place.

Ristene Hall did not feel they were ready to present the draft to the Council of Commissioners. She would like to see them, as a Study Commission, be a lot more prepared. She would like to see them have the public hearing on March 9th and get input from the public. She would then like them to make any necessary revisions made from public input. When they are ready to submit their report, then they should talk to the commissioners, get their input and finalize their report.

Northey Tretheway replied the other side of it is, while it is still early in the process, the council could address any big problems they foresee with the draft.

Wayne Harper agreed with Ristene and thought they could hold the public hearing on the 9th of March and then have the commissioners attend the following week.

Wayne Harper volunteered to go through the draft and assist Jennifer with the formatting of the charter.

Wayne Harper referred to Section 7.02 (b) which states, the Chief Executive shall appoint with the consent of the Council of Commissioners a Public Works Director qualified by training or experience. Wayne thought they were where Paul was from day one. That states he, the Chief Executive, has to do it. He has to appoint a Public Works Director. Wayne suggested they add the language, "if a vacancy exists".

Northey Tretheway replied they could just take that language out of the charter. Northey commented it states in the charter for Finance and Budget, the Council of Commissioners shall maintain by ordinance a Finance and Budget System. He also appointed a Finance and Budget system. Northey asked why do they have the Public Works language in 7.02 (b)(6)?

Wayne Harper replied they either take it out so it is all in Section 4.02 (d) or they add, "if a vacancy exists".

Northey Tretheway suggested they not take out any proposed language they decide to change or take out. They should strike it out and keep it in the draft so they can see all the revisions they have made.

Wayne discussed the grammatical errors in the charter that needed correction.

Bob Worley asked if they would be confusing the public if they hand out the draft the way it is?

Northey Tretheway replied when they meet for the public hearing they are only going to show them the original language and next to that, the proposed language.

Wayne Harper clarified that they would be making copies of the entire draft to hand out to the Council of Commissioners and the Chief Executive.

Dave Palmer asked if they were meeting with the council next week or not? Bob Worley replied that it sounds like they are not going to meet with them until after the public hearing.

Bob Worley confirmed with Northey that they should not make copies of the entire draft to hand out to everyone at the public hearing. Northey replied they could make a couple of copies but he did not think they needed to hand one out to everyone.

Wayne thought they should make copies of the PowerPoint handouts with the explanations of the proposed changes.

Dave Palmer suggested they invite the council to their Study Commission meeting two weeks after the public hearing so they can have a week to work through the public comments made after the public hearing.

Wayne Harper suggested the Study Commission meet on the 15th of March instead of Thursday the 16th of March.

Dave Palmer suggested they invite the council to their meeting on the 23rd of March.

Wayne Harper stated he would redline the draft he just received and then give it to Jennifer.

Wayne Harper suggested they insert page numbers on the draft.

Northey Tretheway referred to Section 4.02 (b)(12)(b) and had Jennifer delete the last three lines after the words, "and objectives." from that section.

Wayne suggested they redo the subsections and use i, ii, iii, etc., instead of a, b, c, etc.

Shag Miller referred back to Section 4.02 (b)(6) the language, "at all regular meetings" and have the word, "all" struck out.

Bob Worley confirmed to Jennifer that they are not going to have the commissioners present on March 2, 2006. Bob Worley was going to inform Charlie and Bob McCarthy.

Dave Palmer referred to Section 7.02 (b) and was not sure if Jennifer was present when they decided to strike out that section.

Wayne Harper read Section 4.02(d), which stated, "the Chief Executive shall appoint with the advice and consent of the Council of Commissioners all non-elected department heads." The Public Works Director is a non-elected department head. Wayne Harper commented a good example is 11.04, the Council of Commissioner shall maintain by ordinance a Finance and Budget System. It does not state the Chief Executive shall appoint a director.

End of Tape 1, Side 1 (Tape was bad at end of side 1)

Northey Tretheway asked if you read the second sentence where it states "all other hiring and firing", whom does "other" refer to?

Wayne Harper replied Bob McCarthy's secretaries. Dave Palmer clarified everyone except the department heads.

Wayne Harper suggested they put "when a vacancy exists" in the first sentence. They leave the second sentence exactly as it is. On the last part in parenthesis, he suggested it state, "all of this section shall be followed in accordance with state law." Both of the changes would then be subject to state law.

Northey Tretheway agreed. He commented state law takes precedence and if someone comes in and starts doing things he/she should not do...you can say anything you want to in the charter. It is not going to stop someone from coming in and attempt to do what was done last time, which was the firings took place first, then the Council of Commissioners came in and approved the hirings.

Wayne Harper clarified that the Council of Commissioners did not give their approval on the terminations. However, they did give their approval on the new people hired.

Bob Worley asked what language they wanted to use. He asked if they wanted to use the language, "in accordance with state law".

Northey Tretheway read what was suggested, “the Chief Executive shall appoint with the advice and consent of the Council of Commissioners all non-elected department heads when a vacancy exists and in accordance with state law.”

Ristene Hall did not agree because she stated if a vacancy does not exist and the new Chief Executive comes in and there is no vacancy there, then that person is there for life. Wayne and Shag Miller replied that is the way law exists today. Ristene Hall suggested the language, “may appoint” instead of “shall” where he has to.

Wayne Harper asked if she wanted the Council of Commissioners to appoint the department head?

Ristene Hall replied no. The Chief Executive may appoint with the advice and consent of the Council...

Wayne Harper replied so he also may not. Wayne thought they should have the language “shall” and “vacancy exists” unless the commission decides to pass the one or four year contracts and pass the language or not pass the language that states, “appoint”. Wayne asked, what if they go with the old language and you have one-year contracts? There could be inconsistencies depending on what the commission does and the language that does pass. They will have to pass ordinances, which he thought was Northey’s point and he agrees with him. The whole government should essentially run by ordinance not by charters. He believes the Chief Executive should be the one doing the appointing. He thinks they need the word, “shall” in there and to protect the county from future lawsuits, he thinks they need the language, “when a vacancy exists”. He suggested after that they state the language as, “all other hiring and firing shall be done in accordance with written policy of the Human Resource Department and all appointments, hiring or firing of this section shall be done in accordance with state law.”

Northey Tretheway was not in agreement with the language in that section, which stated, “all other hiring and firing”, which is the only place they have mentioned firing. He believes the way it is stated is anyone who has been appointed is really at a better spot than anyone else who works for the government. Northey stated they do specify “all other hiring and firing”, that is the only place firing is mentioned. It is not mentioned under appointment at all. He suggested they take out the language, “other” and it state, “all hiring and firing shall be done in accordance with written policies of the Human Resource Department...” If Human Resources wrote the policy the way they should then they would cover how appointments are governed.

Shag Miller’s interpretation of “all other” excludes department heads. Northey replied that is right and that is his point. Northey asked why would you exclude department heads and not somebody else?

Ristene Hall replied they were giving that much power to the Chief Executive.

Wayne Harper commented if they look at that section without their additional sentence, the way it was originally written, the second sentence that starts with, “the Chief Executive” in the deletion, delineates clear powers. It states, “the Chief Executive shall have the power to hire and fire all other employees of local government with the exception of those...It clearly sets forth who the Chief Executive may hire and fire. They have lost some of that clear language the way they have written it. They are counting on written policies to determine how it will be done. Wayne suggested the following language, “the Chief Executive shall appoint with the advice and consent of Council of Commissioners all non-elected department heads. Wayne asked why would they as a commission want it to say, “shall have the power to appoint and terminate with the advice and

consent of the Council of Commissioners”? Why wouldn’t they want the Chief Executive, if he is going to terminate a department head, not have to be directly second checked by the Council of the Commissioners? Northey replied they would. Wayne suggested they drop the word, “other”.

Wayne Harper thought the problem was the sentence they added to that section. He thought they were in the wrong place. They are going to the powers and duties of The Chief Executive. They put in a power of the written policies of the Human Resource Department in the middle of the Chief Executive’s powers. Wayne thought they needed to change the language to, “the Chief Executive shall have the power to appoint and terminate with the advice and consent, of the Council of Commissioners, all non-elected department heads, in accordance with state law.” Wayne suggested they move the language, “all hiring and firing shall be done in accordance with the written policies of the Human Resource Department and in accordance with state law” to Section 7.06, Human Resource Department.

Wayne Harper commented if you look at the BSB Policy and Procedure Manual, a lot of the policies and procedures they were concerned about are already in place. They just are not being followed.

Northey Tretheway pointed to the performance review section in the manual.

Bob Worley asked if they were going to add the language, “when a vacancy exists”?

Wayne Harper replied the proposed language stated, “when a vacancy exists and in accordance with state law”.

Northey Tretheway asked about the language “shall appoint and terminate” and “when a vacancy exists” who are you terminating?

Wayne Harper replied it should read, “the Chief Executive shall have the power to appoint when a vacancy exists and terminate, with the advice and consent of the Council of Commissioners, all non-elected department heads, in accordance with state law.”

Wayne Harper suggested that their record simply be...print out the draft they have today and change from the original to the final. If they start having deletions of their discussion and insertions of deletions and so forth, it is confusing.

Northey Tretheway commented it would be a working document that only they would use.

Bob Worley asked if they took out Section 7.02 (b)? There were replies that it was taken out.

Northey Tretheway referred back to Section 4.02 (d) and the language, “all other hiring and firing”.

Bob Worley confirmed the proposed language read, “all hiring and firing shall be done in accordance with the written policies of the Human Resource Department and in accordance with state law.”

Northey Tretheway commented that there would be people present at the public hearing that would not like the proposed language. Northey explained Bob McCarthy could tell you discussions he has had with a few people around town and Ron Ueland is one of them.

Bob Worley replied Ron Ueland has to understand they, as a Study Commission, cannot override state law.

Northey Tretheway commented that it would be good to have Bob McCarthy present at the public hearing to emphasize state law is state law and it trumps local charters and ordinances.

Wayne Harper replied there is the potential for the Chief Executive to bring in his own people. The council can switch to where new department heads are appointed on an annual or four year basis under contract. They are only going to get renewed if the new Chief Executive wants him or her. Right now, they cannot make it an issue. State law states “for cause”. Wayne Harper commented even “at will” states, which South Dakota and Nebraska have “at will” law. While Montana may switch to their “at will” all states “at will” are getting closer to “for cause”. Their “at will” is getting to a point where you don’t have to have the hurdles we have but you do have to have a reason. A lot of states have passed probationary periods like we have.

Bob Worley confirmed that they will not be making 300 copies of the draft and will make around 30 copies of the Power Point handouts. Bob Worley asked if they should put any copies of the draft in the courthouse or library prior to the public hearing or wait until after?

Dave Palmer suggested they get a copy of the overhead to the news media prior to the public hearing and they can pick out some of the controversial issues to draw people to the public hearing.

Wayne Harper suggested they provide the media with the three or four things that they have voted on, such as, they voted on keeping an elected Sheriff, not an appointed one and they have decided to keep an elected Chief Executive instead of having a City Manager.

Northey Tretheway mentioned what they get into with BSB’s charter is well above and beyond what other community’s charters get into. Northey thought they should bring up the discussion of having a simplified charter to the public hearing and inform them that Butte has the most complex charter compared to other communities in Montana. They should also be informed that the charter as it exists was tailored to the 1976 consolidation of city and county government and all the protections that went into place to protect people’s job. It makes running the county much more difficult and government is not even operating from it. There are things expressly stated in the charter that the government is not doing.

Dave thought that was an advantage to having things spelled out in the charter. If you are aware that government is not following the charter then you can bring it to their attention and make charges if you need to.

Wayne Harper commented Butte is the largest city in Montana that is a combined city-county government so we need a longer charter.

Dave Palmer commented if they do away with the existing charter and go with a simplified charter and run everything by ordinance, for example the Administrative Code, they wouldn’t do anything.

Northey Tretheway replied when you look at what commissions are charged with, they are charged with the form and structure of government not the operating language that tells them how to do things. That is not what the intent of the Study Commission is supposed to be.

Dave Palmer replied when you get into the structure of government, he thinks it could cover that.

Bob Worley commented that they have simplified the existing charter substantially.

Northey Tretheway commented when you start being specific in a document, such as the charter, then you tie the hands of the commissioners, Chief Executive and take flexibility away.

Wayne Harper commented every country in North and South America except for Canada has adopted the U.S. Constitution. It has failed in every country except for the United States for one reason; U.S. follows it. Wayne agrees that one thing they can do is make sure the commission follows the constitution of the city, which is the charter. Wayne further commented they are giving the voters a choice and right to speak on the specifications of the proposed language in the charter.

Northey Tretheway agreed with Wayne that at the public hearing, they highlight the three to four issues, such as the number of commissioners remaining at twelve, they have voted on and explain why they voted the way they did on those issues. Northey believed the more they brought those issues up for discussion at the public hearing, the more feedback they would get from the public.

Date of Next Meeting: March 2, 2006

Adjournment: Wayne Harper moved to adjourn and Dave Palmer seconded. Meeting adjourned at 7:30 p.m.